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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/564,109

08/21/2006

Pascal Fourcade

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04/26/2010

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EXAMINER

LENIHAN, JEFFREY S

ART UNIT

PAPER NUMBER

1796

MAIL DATE

DELIVERY MODE

04/26/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/564,109	Applicant(s) FOURCADE, PASCAL	
	Examiner Jeffrey Lenihan	Art Unit 1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 January 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 8-15, 17-21 and 23-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 8-15, 17-21 and 23-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This Office Action is responsive to the amendment filed on 1/26/2010.
2. The objections and rejections not addressed below are deemed withdrawn.
3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office Action.

Claim Rejections - 35 USC § 103

4. Claims 8-15, 17-21 and 24-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nabeta et al, US4302554 (of record), in view of Marechal, EP1312624 (of record).
5. The rejection stands as per the reasons outlined in the previous Office Action, incorporated herein by reference. Regarding the amendment to claim 8, the examiner notes that the limitation that at least one of the recited group is present in an amount of at least 50% by weight is addressed in paragraph 9 of the Office Action mailed on 2/17/2009, incorporated herein by reference (claim 8).
6. Regarding new claim 28: Nabeta discloses that composition may comprise 2.5 to 50% by weight of the olefinic polymer (Column 2, lines 14-11-14); by extension, the amount of the styrene/butadiene copolymer will fall within the range of 50 to 97.5% by weight. It has been held that in the case where the claimed ranges overlap or lie inside ranges disclosed in the prior art, a *prima facie* case of obviousness exists; see *In re Wertheim*, 541 F.2d 257, 191 USPQ 90 (CCPA 1976); *In re Woodruff*, 919 F.2d 1575, 16 USPQ2d 1934 (Fed. Cir. 1990) (MPEP § 2144.05). It would therefore have been

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obvious to one of ordinary skill in the art at the time the invention was made to prepare a composition comprising 50% by weight of both polymer components.

7. Claims 8-11, 13, 14, 17, 18, and 23-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilkie et al, US6022612 (of record), in view of the K RESIN ® DK11 product data sheet, published by Chevron Phillips Chemical Company in January 2001 (of record).

8. The rejection stands as per the reasons outlined in the previous Office Action, incorporated herein by reference. Regarding the amendment to claim 8, the examiner notes that the limitation that at least one of the recited group is present in an amount of at least 50% by weight is addressed in paragraph 15 of the Office Action mailed on 2/17/2009, incorporated herein by reference (claim 8).

9. Claims 12 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Wilkie et al, US6022612 (of record) and the K RESIN ® DK11 product data sheet (of record) as applied to claim 8 above, and further in view of Marechal, EP1312624 (of record).

The rejection stands as per the reasons outlined in the previous Office Action, incorporated herein by reference.

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10. Claims 8-15, 17-19, 24, 25, and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ishii et al, WO 01/15897 (of record), in view of Marechal, EP1312624 (of record).

11. The rejection stands as per the reasons outlined in the previous Office Action, incorporated herein by reference. As noted in paragraph 11 of the Office Action mailed on 9/2/2008, incorporated herein by reference, the composition of Ishii comprises 5 to 50% by weight of a block copolymer which comprises 50 to 95% by weight styrene and 5 to 50% by weight of a diene such as butadiene (for claims 8, 28) (abstract, examples), 5-50% by weight of the ethylene/olefin copolymer, corresponding to the claimed metallocene-catalyzed polyethylene (mPE) (for claims 8, 28)(abstract), and 5 to 70% by weight of a third copolymer (abstract). It therefore would have been obvious to one of ordinary skill in the art at the time the invention was made to prepare the claimed composition, as it has been held that choosing the overlapping portions of the claimed range and the prior art range is *prima facie* obvious (for claim 8); see *In re Wertheim*, 541 F.2d 257, 191 USPQ 90 (CCPA 1976); *In re Woodruff*, 919 F.2d 1575, 16 USPQ2d 1934 (Fed. Cir. 1990) (MPEP § 2144.05).

12. In view of the teachings of Ishii, it would have been obvious to one of ordinary skill in the art at the time the invention was made to prepare a composition comprising 47.5% of the styrene/butadiene copolymer, 47.5% by weight of the ethylene copolymer, and 5% by weight of the third copolymer. It has been held that a *prima facie* case of obviousness exists where the claimed ranges and the prior art ranges do not overlap but are close enough that one skilled in the art would have expected them to have the

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same properties, see *Titanium Metals Corp. of America v. Banner* 778 F.2d 775, 227 USPQ 773 (Fed. Cir. 1985). Because the difference between the amounts of the copolymer of Ishii and the claimed amounts is small (2.5%), the examiner takes the position that one of ordinary skill in the art would reasonably expect that the properties of the prior art composition would not be materially different from those of the claimed invention. Applicant is therefore required to provide factual evidence demonstrating an unobvious difference between the claimed invention and the prior art composition (for claim 28).

Response to Arguments

13. Applicant's arguments filed 1/26/2010 have been fully considered but they are not persuasive.

14. Regarding the rejection of claims over Ishii in view of Marechal: Applicant argues that the rejection of claims should be withdrawn per the same reasons outlined in the response (see remarks submitted 11/24/2008) to the first Office Action mailed on 9/2/2008. The examiner notes that the range in which the amount of either the mPE or styrene/butadiene block copolymer must fall which is recited in the currently pending claims is not the same as the range applicant was claiming in November of 2008; the arguments therefore are not relevant to the patentability of the currently pending claims.

15. Regarding the rejection of claims over the combination of Nabeta et al and Marechal, EP1312624: Applicant repeats the argument regarding a homogeneous blend previously presented in the submission filed on 05/06/2009. The examiner

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maintains the position that this argument is not persuasive per the rationale outlined in paragraph 9 of the Office Action mailed on 08/26/2009, incorporated herein by reference. Furthermore, it has been held that a chemical composition and its properties are inseparable. Therefore, if the prior art teaches the identical chemical structure, the properties applicant discloses and/or claims are necessarily present; see *In re Spada*, 911 F.2d 705, 709, 15 USPQ2d 1655, 1658 (Fed. Cir. 1990). As discussed in the previous Office Actions, incorporated herein by reference, the combination of Nabeta and Marechal render obvious a composition comprising a metallocene-catalyzed polyethylene (mPE) and a styrene/butadiene block copolymer, wherein 1) the prior art mPE and styrene/butadiene block copolymer are characterized by the same properties of monomeric composition and molecular weight as the claimed mPE and styrene/butadiene block copolymer, and 2) the mPE and the styrene/butadiene block copolymer are combined in similar ratios as used by applicant. As the prior art composition is prepared from the same components combined in similar amounts as the claimed invention, the examiner takes the position that the properties of the prior art article would necessarily be the same as claimed and inherently be not materially different from those of the claimed invention. Applicant is therefore required to provide factual evidence demonstrating that the properties used to define the claimed invention are not present in the prior art composition.

16. Regarding the rejection of claims over Wilkie in combination with additional references, the examiner notes that applicant merely repeats the same arguments previously presented in the submission filed on 05/06/2009 and 10/28/2009; these

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arguments are not persuasive per the rationale outlined in paragraphs 11-14 of the Office Action mailed on 08/26/2009, incorporated herein by reference. As applicant has not provided any new arguments and/or evidence to rebut the examiner's position outlined in the previous Office Action, the rejection of the claims is maintained. The examiner further notes that Wilkie explicitly discloses the use of surface treatments such as chemical, corona discharge, and flame treatments to create a matte finish for applications wherein said matte finish is desired (Column 4, lines 27-30; Column 5, lines 60-64). Applicant therefore has not demonstrated that the modification of the composition of Wilkie discussed in the previous Office Actions would prevent the prior art composition from being used for its intended purpose as a cold seal layer. Furthermore, arguments regarding the formation of a homogeneous blend are not persuasive per the reasons outlined in the previous Office Actions and in the previous paragraph with respect to the combination of Nabeta and Marechal.

17. Regarding claim 28: Applicant argues that the examples provided in the specification demonstrate that allegedly unexpected results are obtained from the claimed invention. The examiner first notes that both comparative examples are 50-50 blends of a polyethylene and a styrene/butadiene block copolymer; applicant therefore has not provided evidence demonstrating that the allegedly unexpected results are not obtained when the amounts of the copolymer components are outside the claimed ranges. Additionally, as noted in the Office Action mailed on 9/2/2008, Ishii discloses examples wherein the ethylene copolymer is a commercial polymer prepared using a homogeneous catalyst. The specification only states that the comparative examples are

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prepared using polyethylene resins prepared by radical polymerization; no information is given regarding the type of catalyst used to prepare the comparative examples. It is unclear how the catalysts of the comparative examples compare to the prior art; applicant therefore has not demonstrated that the allegedly unexpected results are obtained compared to the closest prior art composition.

Conclusion

18. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey Lenihan whose telephone number is (571)270-

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5452. The examiner can normally be reached on Monday through Thursday from 7:30-5:00 PM, and on alternate Fridays from 7:30-4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James J. Seidleck can be reached on 571-272-1078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/ Irina S. Zemel/
Primary Examiner, Art Unit 1796

/Jeffrey Lenihan/
Examiner, Art Unit 1796

/JL/